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IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

In the Matter of Security Building &
Loan Association, a corporation,
Alleged Bankrupt.
SECURITY BUILDING & LOAN ASSOCIA-
TION, a corporation,
Appellant, } No. 7099.
vs.
JOHN H. SPURLOCK, et al.,
Appellees. }

MOTION OF APPELLEES, MARY ROSE, RAY L. ROSE, JOE RAMOS, LILLIAN M. ERWIN, LUTHER M. FRINK, E. DALE FRINK, JOHN H. DIGGES, BILLIE LIEBER, HATTIE M. LIEBER, HATTIE SCHNEIDER LIEBER, HENRY F. LIEBER, HENRY LIEBER, JR., HERMAN LIEBER, AND R. E. L. SHEPHERD, RECEIVER IN BANKRUPTCY, TO DISMISS OR AFFIRM
and
BRIEF AND ARGUMENT ON SAME

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA.

ALICE M. BIRDSALL,
THOMAS W. NEALON,
Counsel for Moving Appellees.

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and

BRIEF AND ARGUMENT ON SAME

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA.

Come now Mary Rose, Ray L. Rose, Joe Ramos, Lillian M. Erwin, Luther M. Frink, E. Dale Frink, John H. Digges, Billie Lieber, Hattie M. Lieber, Hat-Schneider Lieber, Henry F. Lieber, Henry Lieber, Jr., Herman Lieber, Intervening Petitioning Creditors. Appellees herein, by Alice M. Birdsall, their counsel, and R. E. L. Shepherd, as Receiver in Bankruptcy of Security Building and Loan Association, Bankrupt, Appellee, by Thomas W. Nealon, his counsel, and move this court to dismiss, with costs, the appeal taken herein to this court by Security Building and Loan Association, a corporation, and by Ben H. Dodt, State Court Receiver, upon the following grounds:

I.

That this court is without jurisdiction to hear and determine the appeal herein attempted to be prosecuted by Security Building and Loan Association, a corporation, and Ben H. Dodt, State Court Receiver, appellants herein, for the reason that no authority exists, or can exist in said appellants, or either of them, to prosecute this appeal, and that this is so for the following reasons:

That said Security Building and Loan Association, a corporation, did on November 16, 1931, and long prior to the filing of the involuntary petition in bankruptcy herein, in a suit against it filed in the Superior Court of Maricopa County, State of Arizona, on November 16, 1931, being Cause Numbered 35883 in said court, file in said suit its appearance and made no defense to said action, in which action plaintiff asked the appointment of a receiver with authority to liquidate the affairs of said corporation, and that

a receiver was by said Superior Court of Maricopa County, Arizona, appointed on said 16th day of November, 1931, who took over all the business and affairs of said corporation for the purpose of liquidating the same, and that by said action of said Security Building and Loan Association, a corporation, in failing to defend said action, and by the appointment and qualification of a receiver in said proceedings, said corporation and its officers were divested of power and authority to take action contesting the adjudication in bankruptcy in proceedings in the District Court of the United States, for the District of Arizona, wherein the act of bankruptcy alleged and admitted was the appointment of such receiver, and the insolvency of said Security Building and Loan Association was also admitted; that from the time of the appointment of said receiver in said Superior Court of Maricopa County, Arizona; the officers of said corporation were without power or authority to take any action respecting the property or affairs of said corporation and especially any action which would entail the expenditure of funds of said corporation in litigation contesting the action of creditors of said corporation in involuntary bankruptcy proceedings against said corporation based on the acts of said corporation in suffering or permitting a receiver to be appointed in said suit in the Superior Court of Maricopa County, Arizona: and that the officers and agents of said Security Building and Loan Association, a corporation, who are attempting to prosecute said appeal herein were and are without authority to bind said corporation, or to take any action herein on its behalf; that said acts of said officers in so doing are ultra vires and void; and that

no appeal on behalf of said Security Building and Loan Association can be prosecuted by said asserted officers of said corporation herein.

That said Ben H. Dodt, State Court Receiver, is not a proper party appellant herein, and has no right or authority to prosecute an appeal herein on behalf of said Security Building and Loan Association, a corporation, for the reason that he has not been instructed and authorized by the Superior Court of Maricopa County, Arizona, the court under which he holds his appointment and which has jurisdiction of his actions, to take any action in said bankruptcy proceedings, or to prosecute an appeal herein on behalf of said Security Building and Loan Association, a corporation, and that said Ben H. Dodt, State Court Receiver as aforesaid, is without right or authority to prosecute this appeal, said Superior Court of Maricopa County, Arizona, not having authorized him so to do.

II.

That this court is without jurisdiction to hear and determine the appeal herein attempted to be prosecuted by Security Building and Loan Association, a corporation, and Ben H. Dodt, State Court Receiver, appellants herein, for the reason that all the necessary and indispensable parties to the appeal attempted to be prosecuted are not before this court, and that this is so for the following reason:

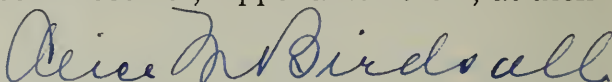
That as appears from the record herein, a decree adjudicating Security Building and Loan Association, a corporation, bankrupt, was made and entered by

the District Court of the United States for the District of Arizona on the 29th day of September, 1932, (Transcript, pages 182-192) and that an order of reference to R. W. Smith, Referee in Bankruptcy, was made on said date, said order requiring said bankrupt to appear before said Referee in said proceedings on October 14, 1932. (Transcript, page 191)

That on October 20, 1932, an order was made by the Honorable F. C. Jacobs, Judge of the United States District Court for the District of Arizona, allowing an appeal from said Decree and ordering that a cost bond on appeal in the sum of Five Hundred Dollars be provided by appellants (Transcript, page 744), and that such cost bond on appeal was filed in said court on October 24, 1932 (Transcript, pages 745-749), but that no supersedeas bond was filed by said appellants, and that therefore the administration of the estate of said Security Building and Loan Association, a corporation, in the bankruptcy court in accordance with said order of reference and the provisions of the Bankruptcy Act has not been stayed. That a trustee has been appointed in said bankruptcy proceedings and that from the time of his appointment said trustee in bankruptcy of the estate of Security Building and Loan Association, a corporation, has been and is the only representative of all the creditors of said bankrupt and that as such representative of all the creditors of said bankrupt he is a necessary and indispensable party to this appeal; that petitioning and intervening petitioning creditors do not and cannot represent other creditors of said Security Building and Loan Association, a corporation, in this appeal, and that an adjudication in bankruptcy hav-

ing been made, and no stay of said proceedings having been taken, *all* creditors of said bankrupt have an interest in the decree entitling them to be heard herein and *must* be made parties to this appeal through their representative, the trustee in bankruptcy, or be severed in proper action taken therefor.

WHEREFORE Appellees Mary Rose, Ray L. Rose, Joe Ramos, Lillian M. Erwin, Luther M. Frink, E. Dale Frink, John H. Digges, Billie Lieber, Hattie M. Lieber, Hattie Schneider Lieber, Henry F. Lieber, Henry Lieber Jr., Herman Lieber, and R. E. L. Shepherd, Receiver in Bankruptcy, ask this Honorable Court to dismiss the appeal filed by Security Building and Loan Association, a corporation, and Ben H. Dodt, State Court Receiver, Appellants herein, at their costs.


ALICE M. BIRDSALL,

*Counsel for Mary Rose, Ray L. Rose,
Joe Ramos, Lillian M. Erwin,
Luther M. Frink, E. Dale Frink,
John H. Digges, Billie Lieber, Hat-
tie M. Lieber, Hattie Schneider
Lieber, Henry F. Lieber, Henry
Lieber, Jr., Herman Lieber, Inter-
vening Petitioning Creditors, Ap-
pellees.*


THOMAS W. NEALON,

*Counsel for R. E. L. Shepherd, Re-
ceiver in Bankruptcy, Appellee.*

MOTION TO AFFIRM

And in the alternative, the said Appellees, Mary Rose, Ray L. Rose, Joe Ramos, Lillian M. Erwin, Luther M. Frink, E. Dale Frink, John H. Digges, Billie Lieber, Hattie M. Lieber, Hattie Schneider Lieber, Henry F. Lieber, Henry Lieber, Jr., Herman Lieber, and R. E. L. Shepherd, Receiver in Bankruptcy, also move this court to affirm the said Judgment and Decree entered by the District Court of the United States for the District of Arizona, on the 29th day of September, 1932, from which Judgment and Decree the appeal in the above entitled cause purports to have been taken, with costs to said Appellees, on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Alice M. Birdsall
ALICE M. BIRDSALL,

*Counsel for Mary Rose, Ray L. Rose,
Joe Ramos, Lillian M. Erwin,
Luther M. Frink, E. Dale Frink,
John H. Digges, Billie Lieber, Hat-
tie M. Lieber, Hattie Schneider
Lieber, Henry F. Lieber, Henry
Lieber, Jr., Herman Lieber, Inter-
vening Petitioning Creditors, Ap-
pellees.*

Thomas W. Nealon
THOMAS W. NEALON,

*Counsel for R. E. L. Shepherd, Re-
ceiver in Bankruptcy, Appellee.*

UNITED STATES OF AMERICA, }
 DISTRICT AND STATE OF ARIZONA, } ss.
 COUNTY OF MARICOPA, }

ALICE M. BIRDSALL and THOMAS W. NEALON, being each duly sworn, each for herself and himself, and not one for the other, doth depose and say: I have read the within Motion to Dismiss, and in the alternative, Motion to Affirm, in the above entitled matter and know the contents thereof; and that the statements contained therein are true according to the best of my knowledge, information and belief.

Alice M. Birdsall

ALICE M. BIRDSALL.

Thomas W. Nealon
 THOMAS W. NEALON.

Subscribed and sworn to before me this 13th day
 of May, 1933.
 (Seal)

Bess M. White

BESS M. WHITE,
 Notary Public in and for
 Maricopa County, Arizona.

My commission expires June 18, 1935.

STATEMENT OF FACTS RELATING TO MOTION
 TO DISMISS AND MOTION TO AFFIRM.

On November 16, 1931, a receiver was appointed by the Superior Court in and for Maricopa County, Arizona, for Security Building and Loan Association, a corporation, in cause numbered 35883 of said court, the receiver being vested with full power and author-

ity to take over the assets of said corporation and liquidate the same, and said receiver immediately took over all assets of said corporation. The order appointing the receiver was entered on the same day the action was filed, the Security Building and Loan Association, through its officers, having entered an appearance on the same day and offering no defense to the proceedings.

On January 5, 1932, an involuntary petition in bankruptcy was filed against said corporation by John H. Spurlock, Ted Dempsey and W. L. Selman, the act of bankruptcy set up being the appointment of the receiver in the state court.

Subsequently and on January 21, 1932, upon order of court authorizing them to do so, Mary Rose, Ray L. Rose and Joe Ramos, intervened and filed their petition in involuntary bankruptcy, and on the 23rd day of January, 1932, R. E. L. Shepherd was appointed receiver in the bankruptcy proceedings. The Rose petition was subsequently amended by leave of court and on March 14, 1932, Lillian M. Erwin, by leave of court, intervened and joined in the petitions theretofore filed. On March 15, 1932, on order of court permitting such action, Luther M. Frink, E. Dale Frink, John H. Digges, Billie Lieber, Hattie M. Lieber, Hattie Schneider Lieber, Henry F. Lieber, Henry Lieber, Jr. and Herman Lieber filed an intervening joining petition jointly with the amended petition of Mary L. Rose, Ray L. Rose and Joe Ramos. In all of the petitions the appointment of the receiver in the state court was alleged as an act of bankruptcy. On March 14, 1932, the Security Building and Loan Association filed its answer, in which it admitted insolvency and the act

of bankruptcy, namely,—the appointment of the receiver, but defended on the ground that it was within a class excepted from the provisions of the bankruptcy act. This answer was by stipulation allowed to apply as an answer to the petition of Luther M. Frink and others filed on March 15, 1932. These matters are not in dispute and all appear from the record in the case.

On May 23, 1932, Ben H. Dodt, the receiver appointed by the Superior Court of Maricopa County, Arizona, filed his answer to all the involuntary petitions and participated as a party defendant in the trial of the issues had before the District Court of the United States for the District of Arizona beginning May 24, 1932. The record discloses no order made by said District Court permitting said Dodt to become a party to the proceedings in the United States District Court and no order made by the Superior Court of Maricopa County, Arizona, authorizing him either to appear in the bankruptcy proceedings in the United States District Court, or to prosecute an appeal from the decree of adjudication made in said cause on September 29, 1932.

Attached hereto, marked Exhibit "A" are certified copies of records of the Superior Court of Maricopa County in said receivership proceeding.

On October 20, 1932, the District Court of the United States for the District of Arizona, entered its order allowing an appeal herein to this court, and fixing the cost bond on appeal at Five Hundred Dollars. (Transcript, pages 743-745.) No supersedeas bond was filed staying the proceedings in the bankruptcy court.

On October 25, 1932, a first meeting of creditors of said Security Building and Loan Association was held at which meeting William McRae was elected trustee in bankruptcy, and on October 25, 1932, said McRae qualified as such trustee. Attached hereto, marked Exhibit "B" is certified copy of record showing appointment and qualification of trustee.

The appeal herein is attempted to be prosecuted by the Security Building and Loan Association, a corporation, through its officers, and by Ben H. Dodt as receiver of said corporation in the state court, as appellants, naming John H. Spurlock, Ted Dempsey, W. N. Selman, Mary Rose, Ray L. Rose, Joe Ramos, Lillian M. Erwin, Luther M. Frink, E. Dale Frink, John H. Digges, Billie Lieber, Hattie M. Lieber, Hattie Schneider Lieber, Henry F. Lieber, Henry Lieber, Jr., Herman Lieber and R. E. L. Shepherd, Receiver in Bankruptcy, as appellees. No attempt has been made to join in the appeal the trustee in bankruptcy, or to take proceedings for severance.

The record on appeal was filed in this court on March 2, 1933.

BRIEF OF THE ARGUMENT

I.

Appellants without authority to prosecute this appeal.

(a) The officers and directors of bankrupt corporation were and are without authority to prosecute this appeal on its behalf.

An appeal must be taken by a party aggrieved.

Gilbert's Collier on Bankruptcy, 2nd Ed. Sec. 25, P. 600.

After the appointment of a receiver, the officers of the corporation have no authority to bind the corporation or act for it respecting its property or affairs.

The appointment of a receiver operates the same as an injunction against the officers taking further action.

Cook on Corporations, 7th Ed., Vol. 4, Sec. 866, p. 3322.

Fiduciary relations of corporate officers or directors are terminated when a receiver is appointed and the officers are enjoined from any further acts relating to the management of the business.

Fletcher Cyc. Corporations, Vol. IV, Sec. 2280; p. 3521;

In re Allen-Foster-Willett Co., 116 N. E. 875;

Linville v. Hadden, 88 Md. 594, 41 Atl. 1097;

High on Receivers, Sec. 290.

(b) The receiver, Ben H. Dodt, appointed by the Superior Court of Maricopa County, Arizona, is without authority to prosecute this appeal, not having obtained authority so to do by order of said Superior Court, whose officer he is.

A receiver cannot sue without leave of court.

High on Receivers, 4th Ed. Sec. 208.

Fletcher Cyc. Corporations, Vol. 8, Par. 5324. Par. 3884, Rev. Stat. Arizona, 1928, provides that a receiver may "subject to the control of the court" bring and defend actions.

"If the statute gives a receiver power to sue in his own name 'under control of the court' he cannot bring an action in his own name without leave of court."

53 C. J., Sec. 535, p. 322.

23 R. C. L., p. 124.

II.

The trustee in bankruptcy is a necessary and indispensable party to this appeal.

The appeal sought to be prosecuted in this case is from a decree of adjudication of bankruptcy and no supersedeas bond has been filed staying the proceedings in bankruptcy.

From the time of the adjudication and the commencement of bankruptcy administration, every creditor is a party having an interest in said decree entitling him to appear and be heard in further proceedings. From and after the election and qualification of the trustee he has been the only representative of *all* the creditors and therefore a necessary and indispensable party to this appeal.

Without a supersedeas an appeal never suspends the execution of an order nor stops its enforcement.

In re Brady, 169 Fed. 152.

All the parties interested in the proceeding should be made parties to the appeal and should be given notice of its pendency and hearing.

Gilbert's Collier on Bankruptcy, 2nd. Ed. Sec. 25, p. 600;

Cyc. Fed. Proc. Vol. 6, Sec. 2677, p. 22;

Stevens v. Nave-McCord Co. (C. C. A. 8th) 17 A. B. R. 609, 150 Fed. 71;

Davis v. Mercantile Trust Co., 152 U. S. 590, 38 L. Ed. 563, 14 Sup. Ct. Rep. 693;

Wilson v. Kiesel, 164 U. S. 248, 41 L. Ed. 422, 17 Sup. Ct. Rep. 124;

In re Carasaljo Hotel Co. (C. C. A. 3rd) 8 Fed. (2) 469.

It is held that on decree refusing adjudication, creditors other than the original petitioning creditors who have intervened and joined in petition must join or be severed on appeal, and appeal was dismissed for want of jurisdiction.

In re Dandridge & Pugh (C. C. A. 7th) 209 Fed. 838;

Conversely, it would seem that on appeal from decree of adjudication, where no stay is taken, all the creditors, through their representative, the trustee, must be joined or severed.

ARGUMENT

PARAGRAPH I.

It is the belief of the appellees appearing here that their Motion to Dismiss should be granted for the reason that this court is without jurisdiction to hear the appeal attempted to be prosecuted because there are no proper parties appellant before the court.

So far as the bankrupt, Security Building & Loan Association, a corporation, is concerned it is earnestly contended by these appellees that the officers and directors of that corporation were and are not only estopped, but precluded, from taking any action in these proceedings on behalf of said corporation for the reason that from and after the appointment of the receiver in the Superior Court of Maricopa County, Arizona, on the 16th day of November, 1931, and the surrender to the receiver of all the property and assets of said corporation on said date, the powers and duties of the officers of the corporation were as effectively suspended as though the corporation were dissolved, and that any attempted action by said officers or directors purporting to bind said corporation in prosecuting this appeal is void and of no effect.

It is not disputed, and the record clearly shows, that from the 16th day of November, 1931, when the receiver was appointed in the Superior Court of Maricopa County, Arizona, up to the time of the appointment of the Receiver, R. E. L. Shepherd, in the bankruptcy proceedings, all the assets of the corporation were in the hands of the receiver appointed by the state court, and the affairs of the corporation were

being administered under the direction of the state court. This is admitted in the answer of Ben H. Dodt, state receiver, (Transcript, pages 152 and 153) and also in the answer of the bankrupt, (Transcript, page 102).

The law is well settled that the appointment of a receiver who takes over all the property and assets of a corporation suspends all powers of the officers and directors, and all their authority over its property and effects.

“The appointment of a receiver over a corporation is generally equivalent to a suspension of its corporate functions and of all authority over its property and effects.”

High on Receivers, Sec. 290.

“Where the corporation is in the hands of a receiver the right of action by the receiver to protect the interest of the corporation is exclusive.”

Klein v. Peter, (8 C. C. A.) 284 Fed. 797.

See also

Cook on Corporations, 7th Ed., Vol. 4, Sec. 866;
 Fletcher Cyc. Corp., Vol. IV, Sec. 2280;
 Re Allen-Foster-Willett Co., 116 N. E. 875;
 Linville v. Hadden, 88 Md. 594, 41 Atl. 1097;

It seems to these appellees that little argument is needed to show that it would be entirely preposterous to permit those officers of a corporation, who had months before surrendered its assets and admitted

insolvency and the act of bankruptcy, to bind the corporation and involve it in expensive litigation affecting the assets and property of the corporation, which according to its sworn answer in these proceedings, were being administered by the Superior Court of Maricopa County, Arizona, through its officer, the state receiver.

This brings us to the next proposition advanced, namely, that the state receiver, Ben H. Dodt, appellant herein, not having obtained the authority of the Superior Court of Maricopa County, Arizona, so to do, is clearly without authority to prosecute this appeal.

That a receiver cannot sue without leave of court is too well established to need argument.

High on Receivers, 4th Ed. Sec. 208; Fletcher Cyc. Corp., Vol. 8, Par. 5324.

Paragraph 3884, Revised Statutes of Arizona, 1928, provides:

“The receiver may, *subject to the control of the court*, bring and defend actions.” (Italics ours.)

This clearly puts the court in “control” of all such actions, and requires authority of the court to proceed.

53 C. J., Sec. 535; 23 R. C. L., page 124;

Certainly a receiver in a state court would not be permitted to jeopardize the property and effects of the corporation being administered by him by in-

volving the corporation in expensive litigation in another court without first having authority from the court whose officer he is to so proceed. The record clearly shows that Ben H. Dodt was not made a party in the District Court of the United States for the District of Arizona, either by being named in the involuntary petition and intervening petitions of creditors, or by petition on his part to intervene in said proceedings. He simply appeared on May 23rd, 1932, and filed an answer without leave of court. (Transcript page 149). Neither in the proceedings in the District Court, nor in the proceedings on this appeal, does he appear under any authority from the Superior Court of Maricopa County, Arizona, whose officer he is, and appellees urge that his action in attempting to prosecute this appeal is void and of no effect.

These appellees contend, therefore, that this court is without jurisdiction for lack of proper parties appellant.

PARAGRAPH II.

These appellees further urge that this court is without jurisdiction to entertain the appeal attempted to be prosecuted herein because of the failure to join the trustee in bankruptcy as a party to said appeal, or to sever him by proper proceedings, the trustee in bankruptcy being a necessary and indispensable party to the appeal as the only representative of *all* the creditors of said bankrupt, after the adjudication in bankruptcy, no supersedeas bond having been filed staying the administration of the estate in the bankruptcy court.

Up to the time of the adjudication, or the dismissal of the petition in bankruptcy every creditor has the right to appear in the proceedings and either join in the petition for adjudication or be heard in opposition thereto.

Sec. 59f, Bankruptcy Act. (This provision has not been changed by recent amendments)

After an adjudication and the election of a trustee, no creditor, as a matter of right, can take an appeal unless the trustee refuses to do so. Of course this does not apply to any creditor who has theretofore either joined in the petition or appeared in opposition thereto. But other creditors, as a whole, are from and after the election of the trustee, represented by the trustee, and he alone can take an appeal.

“Where the creditors as a body are aggrieved, the trustee only should appeal.”

Gilbert's Collier on Bankruptcy, page 600.

The creditors of this corporation, as a body, are certainly parties vitally interested in this appeal, and it would seem to be indubitable that their representative, the trustee in bankruptcy, must be joined and given an opportunity to appear for them on the appeal, and failure to make him a party deprives this court of jurisdiction to hear the appeal.

In the case of *In re Dandrige & Pugh*, 209 Fed. 838, decided by the Circuit Court of Appeals for the Seventh Circuit, an appeal was dismissed for want of jurisdiction for failure to join or sever, creditors who

had intervened and joined in the petition in bankruptcy.

The general rule that parties against whom judgment or order is rendered must unite in appeal is applicable to bankruptcy proceedings.

Gilbert's Collier on Bankruptcy, 2nd Ed., page 600;

Stevens v. Nave-McCord Co., 150 Fed. 71 (C. C. A. 8th);

In re Carasaljo Hotel Co., 8 Fed. (2) 469 (C. C. A. 3rd).

The general rule with regard to necessity of joining all parties affected by a judgment in the appeal, or severing by proper proceedings is forcefully stated by the Supreme Court of the United States in the case of Davis v. Mercantile Trust Co., 152 U. S. 590, 38 L. Ed. 563, 14 Sup. Ct. Rep. 693, wherein a case was dismissed for lack of jurisdiction for failure to join necessary parties.

See also

Wilson v. Kiesel, 164 U. S. 248, 41 L. Ed., 422, 17 Sup. Ct. Rep. 124.

A different situation might have existed here had a supersedeas been filed, staying the administration of the estate in bankruptcy, but without such stay, and with the administration of the estate proceeding, these appellees urge that the trustee in bankruptcy is a necessary and indispensable party to this appeal.

Appellees submit, therefore, that this appeal should be dismissed for lack of jurisdiction in this court.

Since the above authorities and discussion cover all matters contained in the alternative "Motion to Affirm," in the interest of brevity no separate argument is submitted in connection therewith.

Respectfully submitted,

Alice M. Birdsall
ALICE M. BIRDSALL,

*Counsel for Mary Rose, Ray L. Rose,
Joe Ramos, Lillian M. Erwin,
Luther M. Frink, E. Dale Frink,
John H. Digges, Billie Lieber,
Hattie M. Lieber, Hattie Schnei-
der Lieber, Henry F. Lieber, Hen-
ry Lieber, Jr. and Herman Lieber,
Intervening Petitioning Creditors,
Appellees.*

Thomas W. Nealon
THOMAS W. NEALON,

*Counsel for R. E. L. Shepherd, Re-
ceiver in Bankruptcy, Appellee.*

EXHIBIT "A"

IN THE SUPERIOR COURT OF THE STATE OF
ARIZONA IN AND FOR THE COUNTY
OF MARICOPA

ENNIS TABER, <i>Plaintiff,</i> vs. SECURITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Defendant.</i>	}	No. 35883-A APPEARANCE OF DEFENDANT.
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NOW COMES Security Building and Loan Association, a corporation, by its President and Assistant Secretary, and appearing in the above entitled action admits that the said defendant has received and has been duly served with a copy of the complaint and application for receiver filed in the above entitled matter, and has been duly served with summons and with the order to show cause why a receiver should not be appointed, setting the hearing of the application for receiver for November 16, 1931, at 9:30 o'clock in the forenoon of said day and defendant has no objection to said application for receiver being heard on said 16th day of November, 1931, at 9:30 o'clock in the forenoon, or thereafter.

DATED at Phoenix, Arizona, this 16th day of November, 1931.

SECURITY BUILDING AND LOAN ASSOCIATION

By D. H. SHREVE,

(SEAL)

President.

By R. F. WATT,

Assistant Secretary.

ENDORSED NO. 35883-A

Filed at.....M Nov. 16, 1931

WALTER S. WILSON, *Clerk*

By L. H. BUCK, *Deputy.*

IN THE SUPERIOR COURT OF THE STATE OF
ARIZONA IN AND FOR THE COUNTY
OF MARICOPA

ENNIS TABER,

Plaintiff,

vs.

SECURITY BUILDING AND LOAN
ASSOCIATION, a corporation,
Defendant.

No. 35883-A

ORDER

SUBSTITUTING
NEW RECEIVER

NERI OSBORN, JR., having been appointed Receiver of the property, assets, effects and affairs of the Security Building and Loan Association, an Arizona Corporation, on the 16th day of November, 1931, and having on the said day qualified as such receiver, and having filed his Report and having tendered his resignation as such receiver,

NOW, upon motion of Baker and Whitney and Lawrence L. Howe, his attorneys, and good cause appearing therefor,

IT IS HEREBY ORDERED that B. H. Dodt be and he hereby is appointed receiver of the Security Building and Loan Association, an Arizona corporation, in the place and stead of said Neri Osborn, Jr., and he is hereby given all the powers and rights heretofore vested in said Neri Osborn, Jr., as such receiver, and all the conditions and provisions of the original order appointing said Neri Osborn, Jr., as such receiver, are hereby made applicable in connection with the appointment of B. H. Dodt, the receiver now substituted in place of the said former receiver, Neri Osborn, Jr.

IT IS FURTHER ORDERED that said B. H. Dodt upon executing and filing with the Clerk of this court a bond to the State of Arizona in the penal sum of \$25,000.00 conditioned that he will faithfully discharge the duties of Receiver and obey the orders of the Court herein, and upon such bond being filed, the Clerk of this Court will issue a Certificate of appointment and/or substitution.

IT IS FURTHER ORDERED that upon the approval of the Account and Report of Neri Osborn, Jr., receiver, that he be discharged and that upon the delivery of all of the property, assets and effects of the Security Building and Loan Association, an Arizona corporation, by said Neri Osborn, Jr., to said B. H. Dodt and the filing of a receipt from said B. H. Dodt showing such delivery to him of the property, assets and effects of said Security Building and Loan Association, an Arizona corporation, that the bond filed with and approved by this Court on the 16th day of November, 1931, in the sum of \$25,000.00, executed

by said Neri Osborn, Jr., as principal and American Bonding Company of Baltimore as surety, be discharged from any further liability by virtue of said bond and by virtue of said Neri Osborn, Jr's appointment as such Receiver.

Done in Open Court this 14th day of December, 1931.

M. T. PHELPS,
Judge.

ENDORSED NO: 35883-A
FILED AT.....M. DEC. 14, 1931
WALTER S. WILSON, *Clerk*
By G. F. ELLSWORTH, *Deputy*

IN THE SUPERIOR COURT
Of Maricopa County, State of Arizona

ENNIS TABER, <i>Plaintiff,</i>	}	No. 35883-A
vs.		
SECURITY BUILDING AND LOAN ASSOCIATION, a corporation,		
<i>Defendant.</i>		

I, WALTER S. WILSON, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify the foregoing to be full, true and correct copies of the original

APPEARANCE OF DEFENDANT

ORDER SUBSTITUTING NEW RECEIVER

on file and of record in my office in the above entitled cause. That the same constitute a full and complete exemplification of the

APPEARANCE OF DEFENDANT

ORDER SUBSTITUTING NEW RECEIVER

in the said cause, and of the whole thereof.

All of which I have caused to be exemplified according to the act of Congress.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 13th day of May, A. D., 1933.

(SEAL)

WALTER S. WILSON,
Clerk of the Superior Court.

IN THE SUPERIOR COURT
Of Maricopa County, State of Arizona

ENNIS TABER,	}	
		<i>Plaintiff,</i>
vs.		
SECURITY BUILDING AND LOAN ASSOCIATION, a corporation,		<i>Defendant.</i>

I, J. C. NILES, one of the Presiding Judges of the Superior Court of Maricopa County, State of Arizona, do hereby certify that said Court is a Court of Record having a clerk and Seal. That Walter S. Wilson, who has signed the annexed attestation, is the duly elected and qualified Clerk of said Superior Court. That said signature is his genuine handwriting, and that all his official acts, as such Clerk, are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

Witness my hand this 13th day of May, A. D. 1933.

(SEAL)

J. C. NILES,
Judge.

STATE OF ARIZONA }
County of Maricopa } ss.

I, Walter S. Wilson, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the Honorable J. C. Niles whose name is subscribed

to the preceding Certificate, is one of the Presiding Judges of the Superior Court of Maricopa County, State of Arizona, duly commissioned and qualified, and that the signature of said Judge to said Certificate is genuine.

IN WITNESS ~~WHEREOF~~ WHEREOF, I have hereunto set my hand and affixed the seal of said court this 13th day of May, A. D. 1933.

(SEAL)

WALTER S. WILSON,
Clerk of Superior Court.

EXHIBIT "B"

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE FEDERAL DISTRICT
OF ARIZONA.

*In the Matter of Security Building and Loan
Association, a corporation,
Bankrupt.*

No. B-629—Phoenix—In Bankruptcy

CERTIFICATE AND COPY OF ORDER APPROV-
ING TRUSTEE'S BOND

I, R. W. SMITH, Referee in Bankruptcy, in charge of the above entitled matter, do hereby certify that the copy of the Order Approving Trustee's Bond in said matter, hereto attached, is a true and correct copy of said order by me on the 25th day of October, 1932, and I further certify that the same is in full force and effect, and that William McRae is the duly appointed, qualified and acting Trustee in Bankruptcy in the above entitled matter.

GIVEN UNDER MY HAND as Referee in Bankruptcy this 17th day of January, 1933.

R. W. SMITH,
Referee in Bankruptcy.

I, J. LEE BAKER, Clerk of the United States District Court for the District of Arizona, wherein the above matter is pending, do certify that R. W. Smith is the duly qualified and acting Referee in Bankruptcy for the District, including Maricopa County,

Arizona, and that his signature attached to the foregoing certificate is genuine.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT this 17th day of January, 1933.

J. LEE BAKER,
Clerk of the Court.
 By GEORGE A. HILLIER,
Deputy.

(Seal)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE FEDERAL DISTRICT OF ARIZONA.

In the Matter of Security Building and Loan Association, a corporation.

No. B-629—Phx

In Bankruptcy

ORDER APPROVING TRUSTEE'S BOND

IT APPEARING to the Court that WILLIAM McRAE, of Phoenix, Arizona, has been duly elected Trustee of the above named bankrupt, and given his bond with the FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation, of New York City, New York, as surety for the faithful performance of his official duties in the amount fixed by the Order of this Court, to-wit: in the sum of Ten Thousand Dollars (\$10,000.00),

IT IS ORDERED that said bond be and the same is hereby approved.

Dated this 25th day of October, 1932.

R. W. SMITH,
Referee in Bankruptcy.

